

1. In operating witnesses, appellant would pay the civil penalty imposed by
2. the master. Mr. McGoffin agreed to prepare the appropriate order for
3. approval by the Pollution Control Hearings Board.

4. Witnesses were sworn and testified and exhibits were admitted.
5. Proposed Findings of Fact, Conclusions and Order were prepared and
6. read aloud to the parties on July 10, 1972. Exceptions were filed by the
7. appellant and the Railroad on July 28, 1972. Briefs were filed in
8. support of the Exceptions and in opposition thereto.

9. Having fully considered the Exceptions and the arguments thereon, the
10. Pollution Control Hearings Board now enters its Findings of Fact,
11. Conclusions and Order.

12. FINDINGS OF FACT

13. I.

14. On October 3, 1970, appellant disposed of wood waste material
15. from the demolition of old freight cars in its yards at South Tacoma,
16. Pierce County, by outdoor fires under permits issued by respondent.
17. Appellant ceased this practice after being notified that no more permits
18. could be issued for this purpose. It sought, unsuccessfully, to make a
19. permanent arrangement with Tacoma refuse disposing officials.
20. As a result, a large accumulation of wood debris from demolished
21. cars began to be built up in the South Tacoma yards. This debris also
22. included scraps of grain and other foodstuffs which had been dropped in
23. the cars. Eventually, appellant was directed by rodent control health
24. officials to dispose of the debris. This order caused appellant to use
25. a bulldozer to shove the debris into a pit about 75 feet long, 50 feet
26. wide and 2 feet deep and to cover the waste material with about 3 feet

27. FINDINGS OF FACT,
28. CONCLUSIONS AND ORDER

1 of gravel and dirt. Beginning in June, 1971, appellant arranged with a
2 Pierce County disposal organization to haul away in containers its
3 freight car demolition wastes.

II.

4 At about 2:00 a.m. on Sunday, January 30, 1972, a heavy pillar of
5 vapor of smoke and steam began to pour out of the surface of the pit
6 and from a subterranean fire apparently caused by spontaneous
7 combustion. A strong south wind blew the plume of smoke and steam over
8 portions of Tacoma, causing numerous complaints from persons in the
9 affected area.

III.

10 Inspectors of respondent and fire control employees of appellant
11 responded to these complaints. Roused from their beds, they went to
12 the South Tacoma yard area through snow at least 9 inches deep and in
13 subfreezing temperatures. The inspectors, unable to gain entrance to
14 the yard area because of a locked gate, did not make contact with the
15 fire control employees who poured water from hoses on the pit area.

IV.

16 As a result of the heavy pillar of smoke which they observed the
17 inspectors issued a Notice of Violation against appellant, but did not
18 impose a civil penalty in connection therewith.

V.

19 Fire control employees of appellant worked a total of 18 manhours
20 on Sunday, January 30, 1972 to stop the smoke and steam. They attempted
21 to fill the pit with water.

22 FINDINGS OF FACT,
23 CONCLUSIONS AND ORDER

VI

At 9:30 a.m., Monday, January 31, 1972, an inspector of respondent
inspected the South Tacoma yards and saw smoke and steam of about one
foot in the amount of smoke noted the previous day still being emitted
from the pit area. He issued Notice of Violation No. 5-26 and, on
January 15, 1972, Notice of Civil Penalty, No. 218, in the amount of
\$100, for breach in connection therewith.

VII.

Later in the day on January 31, 1972, appellant firm employed
South removal equipment to expose the burning material and the fire
was extinguished.

From these findings, the Pollution Control Hearings Board comes
to the following conclusions:

CONCLUSIONS

I.

Appellant was in violation of respondent's Regulation I on
January 30 and 31, 1972 for the reason that an outdoor fire, for which
it had obtained a permit burned on its property on those days
and the location was not for by appellant or its employees, yet it
was on property owned and controlled by appellant.

II

Appellant, despite subfreezing weather, strong winds and a deep
covering of drifting snow, made reasonable efforts to extinguish the fire,
calling employees from their homes at an early hour on a Sunday morning
for overtime work, and its employees were again called to the premises
on Monday, January 31, 1972, when the supposedly extinguished fire

FININGS OF FACT,
CONCLUSIONS AND ORDER

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III.

No civil penalty was imposed for the fire on Sunday, January 30th, 1972, which may have been the cause, but a penalty of \$250.00 was imposed for the supposedly extinguished fire which revived on Monday, January 31, 1972. The penalty imposed is the maximum allowable sum provided by law for any one violation. In view of appellant's diligent and persistent efforts to contain and extinguish the fire, the penalty appears to be excessive.

IV.

We cannot accept the contention that the respondent must establish that appellant's conduct was "willful" before a civil penalty can be imposed under the provisions of RCW 70.94.031, for the fire occurring on January 31, 1972 on the appellant's premises.

WHEREFORE, the Pollution Control Hearings Board issues this

ORDER

Respondent's Notice of Violation No. 5428 is sustained, but Notice of Violation No. 215 issued in connection therewith is remanded to the respondent to be replaced or corrected for the date with appellant's efforts to contain and extinguish the fire.

DO B at Olympia, Washington this 27th day of October, 1972

POLLUTION CONTROL HEARINGS BOARD

Wall Woodward
WALL WOODWARD, Chairman

Marlene Little
MARLENE LITTLE, Member

JAMES J. SULLIVAN, Member